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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,407	08/02/2001	Benjamin Frydman	376462000800	7255

25226 7590 03/25/2003
MORRISON & FOERSTER LLP
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EXAMINER

TRAVERS, RUSSELL S

ART UNIT PAPER NUMBER

1617

DATE MAILED: 03/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.
09/922,407

Applicant(s)
Frydman et al

Examiner
R.S. Travers J.D., Ph.D.

Art Unit
1617



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above, claim(s) 15-36 and 42-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 37, 38, and 41 is/are rejected.
- 7) ☒ Claim(s) 39 and 40 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 11 6) ☐ Other:

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The amendment filed October 29, 2002 has been received and entered into the file.

Claims 1-44 are presented for examination.

Applicant's election without traverse of Group I, claims 1-14 and 37-41 in Paper No. 10 is acknowledged.

Claims 15-36 and 42-44 reading on non-elected subject matter are withdrawn from consideration.

(12) ~~112~~ 112 R 2 Y need to be 14 - not possible

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6 9-¹⁰~~11~~ and 13-14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Misra et al or Rukunga et al or Mar et al.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

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Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-14, 37-38 and 41 are rejected under 35 U.S.C. § 103 as being unpatentable over Misra et al, Rukunga et al, Mar et al and Applicants' admission on the record.

Misra et al, Rukunga et al, Mar et al teach; and Applicants' admit on the record (see specification at page 24 (spermidine and spermine)) the claimed compounds as old and well known in combination with various pharmaceutical carriers and excipients in a dosage form. These medicaments are taught as useful for treating various maladies. Claims 2-3, 7-8, 12, 37-38 and 41, and the primary references, differ as to:

1) the specific recitation of those compounds herein recited.

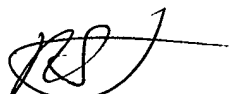
The skilled artisan possessing a compound for a therapeutic use possesses that compounds, analogs, homologs, acids, esters, salts and bioisosteres for the same use. In the instant case, the Examiner cited prior art teaches natural compound, and isomers for those compounds as residing within the recited claims scope. Misra et al, Rukunga et al, Mar et al teach various positional isomers residing within the claimed invention (see budmunchiamine K, a, b, and c). Possessing these prior art teachings, the skilled

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artisan would view those compounds herein recited as obvious, Absent limitations distancing the presented claims from those compounds residing in the prior art, or obvious variants of compounds residing in the prior art, the presented claims remain properly rejected as obvious.

Claims 39 and 49 are objected to as depending on rejected claims.

Any inquiry concerning this communication should be directed to Russell Travers at telephone number (703) 308-4603.



Russell Travers
Primary Examiner
Art Unit 1614